IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.6.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

A.S.Nos.216 and 261 of 2004
and
CRP.NPD Nos.97/2006 and 1108/2005

A.S.No.216/2004

Jayalakshmi .. Appellant

vs.

1.Arokkiamary
2.A.V.K.Raman
3.A.V.K.Lakshmanan
4.A.V.K.Kasthuribai .. Respondents

A.S.No.261/2004

1.A.V.K.Raman
2.A.V.K.Lakshmanan
.. Appellants

vs.

1.Tmt.Arokiamary
2.Jayalakshmi
3.A.V.K.Kasthuribai
.. Respondents

CRP.NPD No.97/2006

1.A.V.K.Raman
2.A.V.K.Lakshmanan
.. Petitioners

vs.

Smt.Arokiamary .. Respondent

CRP.NPD No.1108/2005

A.V.K.Raman .. Petitioner

vs.

1.Tmt.Arokiamary
2.A.V.K.Lakshmanan
.. Respondents

A.S.Nos.216/2004 and 261/2004 filed against the judgment and decree dated 30.9.3003 made in O.S.No.4225/1999 on the file of the III Addl.Judge, City Civil Court, Chennai. CRP.NPD No.97/2006 filed against the dismissal of the Application filed under Sec.47 of CPC in E.A.No.5825/2005 in E.P.No.786/2005 in O.S.No.4225/1999 dated 27.12.2005 passed by the X Asst.City Civil Judge, Chennai. CRP.NPD No.1108/2005 filed against the dismissal of the Application filed under Sec.47 CPC, in E.A.No.6253/2004 in E.P.No.1400/2004 in O.S.No.4225/1999 dated 1.4.2005 passed by X Asst.City Civil Judge, Madras.

Mr.A.A.Lawrance : For appellants/petitioners
in A.S.No.261/04 & CRP.NPDs.1108/05 97/06
Mr.K.P.Gopalakrishnan : For 1st respondent in
all cases.

COMMON JUDGMENT

A.S.Nos.216/2004 has been filed by the 3rd defendant against the judgment and decree dated 30.9.3003 made in O.S.No.4225/1999 on the file of the III Addl.Judge, City Civil Court, Chennai.

2.A.S.No.261/2004 has been filed by defendants 1 and 2 against the judgment and decree dated 30.9.3003 made in O.S.No.4225/1999 on the file of the III Addl.Judge, City Civil Court, Chennai.

3.CRP.NPD No.97/2006 has been filed by defendants 1 and 2 against the dismissal of the Application filed under Sec.47 of CPC in E.A.No.5825/2005 in E.P.No.786/2005 in O.S.No.4225/1999 dated 27.12.2005 passed by the X Asst.City Civil Judge, Chennai.

4.CRP.NPD No.1108/2005 has been filed by 1st defendant against the dismissal of the Application filed under Sec.47 CPC, in E.A.No.6253/2004 in E.P.No.1400/2004 in O.S.No.4225/1999 dated 1.4.2005 passed by X Asst.City Civil Judge, Madras.

5.O.S.No.4225/1999 was filed by the plaintiff/1st respondent in both the first appeals for a judgment and decree directing defendants 1 and 2 in the suit (appellants in A.S.No.261/2004) and 3rd defendant (appellant in A.S.No.216/2004) to vacate and hand over possession of the portions in their occupation in the suit schedule property and for a further direction directing defendants 1 and 2 to pay a sum of Rs.62,500/- towards damages and to pay a sum of Rs.3,500/- per month from the date of the plaint till they hand over vacant possession. Similarly the plaintiff sought for a direction directing 3rd defendant to pay a sum of Rs.87,500/- towards damages and to pay a sum of Rs.4,500/- per month from the date of the plaint till she hand over possession. The suit schedule property is the

entire ground floor portion, except two shops measuring 240 sq.ft., in the occupation of the plaintiff, which is in the occupation of defendants 1 and 2 and the entire 1st floor portion which is in the occupation of 3rd defendant in premises No.16, Vellayutha Pandian Street, Old Washermanapet, Chennai.21.

6.Briefly stated the plaint averments are as under:
The suit schedule property was originally owned by one Kumarasamy Nadar. The said Kumarasamy Nadar died leaving behind a number of legal heirs including his wife, A.V.K.Kasthuri Bai, the 4th defendant in the suit. In a partition suit filed by the legal heirs of Kumarasamy Nadar, a compromise decree was passed by this court in A.S.No.614/1984 on 21.7.1989. The suit property, as per the compromise decree was allotted to 4th defendant, who on 12.6.97 sold the same to the plaintiff for a sum of Rs.4,50,000/- by executing a sale deed registered as document No.1499 of 1997 at Sub-Registrar Office, Royapuram. It is the case of the plaintiff that the defendants trespassed into the premises after she purchased the property. As trespassers they are liable to pay damages for their prior occupation and also for their present occupation as prayed in the plaint.

7.Defendants 1 and 2 filed a written statement stating that they are brothers and 3rd defendant is their sister. They along with A.V.K.Senthilkumar, A.V.K.Murugesan, 3rd defendant and Dhanapakkiammal are the children of Kumarasamy Nadar and 4th defendant who is 2nd wife of their father. Defendants 1 and 2 admit that a compromise decree was passed in A.S.No.614/1984, but before signing the compromise memo, 4th defendant, their mother, gave an undertaking in writing on 28.6.1989 to the effect that she would not alienate the suit schedule property during her life time and after her death it should be divided equally among her 4 sons.

8.Therefore according to defendants 1 and 2 their mother, i.e., 4th defendant has no power to execute the sale deed in favour of the plaintiff. Defendants 1 and 2 further state that they are not trespassers and they have been in possession of their portions for the past so many years and they have never vacated their portions and re-occupied the same after purchase as alleged by the plaintiff. Therefore they contended that the plaintiff has ;no title and she cannot ask for recovery of possession and damages from them.

9.The 4th defendant filed a separate written statement in which she also admits that the suit schedule property belongs to her absolutely on the basis of the compromise decree in A.S.No.614/1984. But she has stated that in the year 1997, youngest son A.V.K.Senthilkumar obtained her signature on stamp papers by falsely representing that it is a settlement deed settling the suit property in favour of her daughter Jayalakshmi the 3rd defendant. She further stated that 3rd defendant has been living in that property always and she is not a trespasser. A similar written statement was filed by 3rd defendant as that of the written statement of 4th defendant.

10.With the above pleadings the trial court framed the following 3 issues namely,
"1)Whether the plaintiff is entitled to get possession of the suit schedule property?
2)Whether the plaintiff is entitled to get damages from the defendants?
3)What other reliefs the plaintiff is entitled to?"

11.The following additional issues were also framed by the trial court:
"1)Whether defendants 1 to 3 are in possession of their portions in the suit schedule properties as trespassers?
2)Whether the undertaking dated 28.6.1989 is true and valid?
3)Whether the sale deed dated 12.6.97 is legally sustainable or not?"

12.For the additional issues 2 and 3, the trial court after evaluating the evidence, held that the undertaking dated 28.6.1989 is not a valid document and not binding on fourth defendant and the sale deed dated 12.6.97 is a legally enforceable document. For the other issues the trial court held that even though the defendants are not trespassers, they are not in lawful possession of their portions and therefore they are liable to hand over possession of the same to the plaintiff. The trial court further held that defendants 1 and 2 should pay a sum of Rs.1,000/- per month from 7.7.99 (date of filing of the suit) to the plaintiff till the possession is handed over by them. Similarly 3rd defendant is directed to pay a sum of Rs1,500/- per month from 7.7.99 (date of filing of the suit) to the plaintiff till she hands over possession. The trial court further directed the defendants to pay a sum of Rs.58,590.50 as cost to the plaintiff.

13.Aggrieved by the judgment of the trial court dated 30.9.2003, defendants 1 and 2 and defendant 3 filed the above first appeals separately.
14.In A.S.No.261/2004 filed by defendants 1 and 2, the appellants, in their grounds attacked the entire findings of the trial court and contended that if the entire matter is reconsidered by this court, the judgment of the trial court is to be set aside and the suit is to be dismissed. Defendants 1 and 2 raised additional grounds in A.S.No.261/2004 in which for the first time they questioned the very validity of the compromise decree itself dated 21.7.1989 on the ground that the same was not engrossed on Non-Judicial stamp paper as per Sec.35 of the Indian Stamp Act and in such circumstances nobody can act on the basis of the compromise decree. As the sale deed dated 12.6.97 itself was executed by their mother, 4th defendant on the basis of her right in A.S.No.614/1984, the sale deed itself is not a valid document by which the property cannot be transferred to the plaintiff. The appellants in A.S.No.261/2004 further raised an addition ground to the effect that the trial court committed an error in directing all the three defendants to bear the cost of the plaintiff without any apportionment as defendants 1 and 2 defended the suit separately and so did 3rd defendant.

15.Heard the learned counsel for the appellants in A.S.No.261/2004 and the learned counsel for the 1st respondent/plaintiff. I have also perused the documents filed and the judgments referred to by them in support of their submissions.
16.The learned counsel for the appellants/defendants 1 and 2 strenuously contended that the trial court has committed a serious error in disregarding the undertaking dated 28.6.1989 given by their mother, 4th defendant especially when she herself admitted that she signed that undertaking. The learned counsel urged that if the undertaking dated 28.6.89 is acted upon, 4th defendant has no right to sell the property to the plaintiff and the sale deed dated 12.6.97 is not a valid document. The learned counsel further placed great emphasis on the additional ground namely, as the compromise decree itself was not engrossed on stamp papers, the same cannot be acted upon by anyone and consequently the sale deed executed by 4th defendant to the plaintiff on the basis of her right derived from the compromise decree is a nullity in the eye of law. The learned counsel relied on the following decisions in support of his submissions:

1)47 L.W. 51 (Satyanandam v. Nammayya)
2)AIR 1969 SC 1238 (H.S.Ltd. v. M/s.Dilip Construction)
3)AIR 1973 SC 2391 (Chandrika v. Bhaiyalal)
4)1990(1)SCC 193(Sushil Kumar Mehta v. Gobind Ram Bohra)
5)1970(1)SCC 670(V.D.Modi v. R.Abdul Rehman and Ors.)
6)AIR 1996 SC 1819(Urban Improvement Trust, Jodhpur v. Gokul Narain)
7)2004(1)SCC 287(Rafique Bibi v. Sayed Waliuddin)

17.Per contra, the learned counsel for the 1st respondent/plaintiff submitted that the compromise decree dated 21.7.1989 was marked as Ex.A1 before the trial court without any objections and in fact all the defendants unanimously admitted and accepted the said compromise decree. Therefore it

is not for the appellants/defendants 1 and 2 to question the validity of the same for the first time before this court that too, as an additional ground. The learned counsel added that Sec.35 of the Indian Stamp Act is not applicable in the present case and as per Sec.36 of the Act, the validity of the compromise decree cannot be questioned at all by the defendants. He further pointed out that the so called undertaking dated 28.6.89 marked as ExB4 is not at all a valid document and even a cursory look of the same will establish that it is a bogus document created for the purpose of the suit only. He relied on the decisions of the Supreme Court reported in 1) AIR 1956 SC 12 (Annamalai v. Veerappa); 2)AIR 1961 SC 1655 (Javer Chand v. Pukhraj Surana). The learned counsel further submitted that the right of the plaintiff arose from the sale deed dated 12.6.1997 which is a properly stamped and registered document and not from the compromise decree. Even otherwise, the learned counsel for 1st respondent/plaintiff submitted that even now the compromise decree could be engrossed on a stamp paper if it is necessary. For which the learned counsel for the appellants replied that as the compromise decree was passed on 21.7.89, it is not open to the parties to engross the same on stamp paper in the year 2007 as the period of limitation would start running from the date of the decree and not from the date of engrossing it on a stamp paper. For this purpose, he relied on the decision of the Supreme Court reported in 2005(3)L.W.640(Dr.Chiranjilal(D) By L.Rs., vs. Haridas(D) By L.Rs.) to submit that period of limitation begins to run from the date when the decree is passed and not from the date when the decree is engrossed on the stamp papers supplied by the parties.

18.In the light of the above pleadings pleaded, grounds of appeal raised and arguments advanced, the following issues emerge for consideration:

1)Whether the undertaking dated 28.6.1989 is binding on 4th defendant and consequently she is not entitled to execute the sale deed dated 12.6.1997?
2)Whether the plaintiff/1st respondent in both A.S.Nos.216 and 261 of 2004 derives title to the suit schedule property on the basis of the sale deed dated 12.6.1997?
3)Whether the compromise decree dated 21.7.1989 could not be acted upon in view of Sec.35 of the Indian Stamp Act?
4)Whether the plaintiff/1st respondent in both A.S.Nos.216 and 261 of 2004 is entitled to get possession of the portions of the suit schedule properties under the occupation of the defendants?
5)Whether the damages granted by the trial court to the plaintiff/1st respondent in both A.S.Nos.216 and 261 of 2004 are sustainable?
6)Whether the trial court is wrong in not apportioning the costs between defendants 1 and 2/appellants in A.S.No.216/2004 and 3rd defendant/appellant in A.S.No.261/2004?
7)To what other reliefs the plaintiff/1st respondent in A.S.Nos.216 and 261 of 2004 is entitled to?

19.Issues 1 and 2: The entire case of the plaintiff hinges on the sale deed dated 12.6.1997 executed by 4th defendant in her favour. The sale deed dated 12.6.97 was marked as Ex.A2. A perusal of Ex.A2 would make it very clear that it was executed by 4th defendant by stating that the suit schedule property was allotted to her share in the compromise decree dated 21.7.1989 in A.S.Nos.614/1984 and the property belongs to her absolutely. Ex.A2 further discloses that a sum of Rs.4,50,000/- was paid by the plaintiff and possession was given to the plaintiff. This sale deed was duly registered as document No.1499/1997 at S.R.O., Royapuram. One of the witnesses to this document is none other than 4th defendant's own son K.Senthilkumar. But this document was assailed by defendants 1 and 2 on the ground that a compromise decree dated 21.7.89 made in A.S.Nos.614/1984 is subject to the undertaking given by 4th defendant on 28.6.1989. The undertaking document was marked as Ex.B4. This document is titled as @cWjpbkhHp gj;;;;;;;jpuk;@ in Tamil. As per the document an undertaking was given by 4th defendant that she would not alienate the suit schedule property till her death, but she would enjoy the same. If any final decree is to be passed before her death, then she would execute a settlement deed in favour of her four sons. Even if she does not execute a sale deed before her death, the same should go to her four sons in

equal shares. Relying on this undertaking defendants 1 and 2 contended that even though it was stated in the compromise decree that the suit property belonged to her absolutely, she had no right to alienate the property to the plaintiff on the basis of the undertaking given by her. In her deposition 4th defendant as D.W.3 admits that Ex.B4 was an undertaking given by her to her sons, but she denied that the contents of the Deed were known to her. Even though 4th defendant is prevaricating in her statement about the execution of Ex.B4, in the present suit and also in the previous suits filed between the parties, her consistent stand is that notwithstanding Ex.B4, she has got absolute right over the suit schedule property.

20.It is not in dispute that the suit schedule property was allotted to 4th defendant absolutely in the compromise decree dated 21.7.1989 and there was no mention about the undertaking dated 28.6.89 as is evident from the compromise decree which was marked as Ex.A1. This fact was also admitted by 1st defendant as D.W.1 in his deposition. In fact D.W.1 has clearly stated in the cross-examination that as per the compromise decree, her mother is the absolute owner of the property and there was not even a whisper about Ex.B4 in the compromise decree even though Ex.B4 was signed by his mother much before signing the compromise memo. In such circumstances, it cannot be said that the compromise decree with regard to 4th defendant is subject to the undertaking signed by her on 28.6.89. That apart, the undertaking on its own will not give any rights to the defendants as it only says that she would not alienate the property. She would execute the settlement deed in favour of her four sons in the event of final decree being passed and even if she does not execute the settlement deed before her death, the property would go to her four sons equally. Thus this undertaking is neither a settlement deed, nor an agreement signed by all the parties nor a Will bequeathing the suit schedule properties nor it confers any right on defendants 1 and 2. That is the reason for not making claim by the other two sons with regard to suit schedule properties. In fact one of the other two sons was a witness to the sale deed dated 12.6.97 (Ex.A2). In such circumstances, the only conclusion that could be arrived at is that the undertaking dated 28.6.89 cannot be put against 4th defendant for transferring the suit schedule property to the plaintiff. As a valid transfer has been made under the sale deed dated 12.6.97 (Ex.A2) the plaintiff derives title and has become the owner of the suit schedule property. Thus the issue Nos.1 and 2 are answered in the above terms in favour of 1st respondent/plaintiff and against the appellants/defendants 1 and 2.

21.Issue No.4: As I have held that the plaintiff has become the owner of the suit schedule property on the basis of Ex.A2, consequently I am holding that she is entitled to get possession of the property from the defendants. Considering the fact that defendants 1 and 2 claim right over the property only on the basis of Ex.B4, which in my view does not confer any right on them, they have no rights over the suit schedule property and the plaintiff is entitled to get possession of the suit schedule property from defendants 1 and 2. Thus the issue No.4 is answered in favour of 1st respondent/plaintiff and against the appellants/defendants 1 and 2.

22.Issue No.3: Great efforts were taken by the learned counsel for the appellants to assail the order of the trial court on the basis of the additional ground namely, as the compromise decree dated 21.7.1989 made in A.S.No.614/1984 marked as Ex.A1 was not engrossed on stamp paper, Sec.35 of the Indian Stamp Act will hold the field and the decree itself is not a valid decree and consequently Ex.A2 is also a nullity in the eye of law.

23.This issue was not at all raised before the trial court and no objection whatsoever was raised by any of the defendants when the compromise decree was marked as Ex.A1. In fact all the parties to the suit admit and accept that there was a compromise decree and on that basis properties were allotted to various legal heirs including 4th defendant. The only objection by defendants 1 and 2 before the trial court is that in view of Ex.B4, 4th defendant could not execute the sale deed dated 12.6.1997, i.e., Ex.A2. Now their contention in that appeal is that as the compromise decree was not

engrossed on a stamp paper, the same is a nullity in the eye of law and the trial court ought not to have acted upon it to come to a conclusion that Ex.A2 sale deed dated 12.6.97 is validly executed by 4th defendant in favour of the plaintiff.

24.I am unable to accept this last minute desperate attempt on the part of the appellants/defendants 1 and 2 to assail the sale deed dated 12.6.1997, Ex.A2.

25.The entering into a compromise among the family members was not at all disputed by any one, which culminated into passing a judgment by this court in A.S.No.614/1984 (Ex.A1) on 21.7.1989. It is also not in dispute that based on the compromise decree, the properties were divided among the parties including defendants 1 and 2 and 4th defendant. Thus all the parties to the compromise decree acted upon as per the clauses contained therein and that is why the suit schedule property was specifically allotted to 4th defendant. Thus the compromise decree and its clauses were completely acted upon, parties to the decree were allotted with properties on the basis of the compromise decree. In such circumstances, nothing else remains to be done based on the compromise decree passed on 21.7.89. Therefore the appellants/defendants 1 and 2 could not unsettle the settled things, that too at this juncture after a lapse of nearly 15 years. Further they themselves agree with the entire clauses contained in the compromise decree and that is the reason the appellants filed a suit in C.S.No.723/2000 before this court for declaration to declare the compromise decree dated 21.7.89 to be set aside insofar as allotment of the suit schedule property to 4th defendant is concerned. By filing C.S.No.723/2000, the appellants/defendants 1 and 2 now admit that the entire compromise decree is valid except the portion in which the suit schedule property was absolutely allotted to 4th defendant. This conduct will also go against them for the reason that if the appellants/defendants 1 and 2 are of the view that the compromise decree is a nullity as the same was not engrossed on a stamp paper, then they cannot maintain that it is valid insofar as the other clauses are concerned, but invalid insofar as allotting the suit schedule property to fourth defendant is concerned. Therefore I reject this additional ground raised at a belated stage to assail the compromise decree by itself. Further the compromise decree insofar as the allotment of suit schedule property is concerned, the same is under challenge in C.S.No.723/2000. In fact it was admitted by D.W.1 in his cross-examination that they filed an application to try both C.S.No.723/2000 and O.S.No.4225/1999 together, but the same was rejected by this court and the appeals filed were also rejected.

26.Now let me consider the decisions relied on by both the learned counsel in this regard.

27.In 47 L.W. 51 (cited supra), a Division Bench of this court held that a final decree for partition has no existence as a decree until it is engrossed on the proper non-judicial stamp paper and till that is done the suit is pending.

28.The facts in the above case are totally different and in view of the peculiar facts of the present case, the appellants cannot draw any support from the above decision.

29.In 1969 S.C. 1238 (cited supra), the Hon'ble Supreme Court held that by Sec.36 of the Indian Stamp Act an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Sec.36 does not prohibit a challenge against an instrument that it shall not be acted upon because, it is not only duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act.

30.This decision is also not helpful to the appellants as the entire compromise decree was acted upon by all the parties before the suit itself was filed by the plaintiff.

31.In 1973 SC 2391 (cited supra) the Hon'ble Supreme Court held that where the court is inherently lacking in jurisdiction, the plea as to jurisdiction may be raised at any stage even if it was not raised in trial court.

32.In 1990(1)SCC 193(cited supra), the Supreme Court held that the decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice and a decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings.

33.In 1970(1) SCC 670 (cited supra), the Supreme Court held that when a decree which is a nullity is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record.

34.In AIR 1996 S.C. 1819(cited supra), the Supreme Court held that nullity has to be understood in the sense that it is ultra vires of the powers of the court passing the decree and not merely avoidable decree. Nullity can be assailed at any stage including at the execution or in a collateral proceedings since it strikes at the very jurisdiction and authority of the court.

35.In 2004(1)SCC 287(cited supra) the Supreme Court held that a decree can be said to be without jurisdiction and hence a nullity, if the court passing the decree usurped the jurisdiction which it did not have.

36.Citing the above decisions, it was strongly contended by the learned counsel for the appellants/defendants 1 and 2 that as the decree has been passed on the basis of the compromise decree which was not engrossed on proper stamp papers, the same is a nullity in the eye of law.

37.I am unable to accept this contention for the simple reason that all the above decisions dealing with the issue of jurisdiction will not apply to the decree under challenge before me as by no stretch of imagination it can be said that the trial court did not have the jurisdiction to try O.S.No.4225/1999.
38.In AIR 1956 SC 12 (cited supra), the Supreme Court while dealing with Sec.36 of the Indian Stamp Act held that where a document has been admitted in evidence by a lower courts, such admission cannot be called in question at any stage of the proceedings on the ground that it has not been duly stamped. The provisions of Sec.36
of the Act preclude the parties from raising any objection against the admission of documents at appellate stage.
39.In AIR 1961 SC 1655 (cited supra), the Supreme Court held that once a document has been admitted in evidence inadvertently, without the court applying its mind to its admissibility it is not open either to the trial court itself or to the court of appeal or revision to go behind that order as Sec.36 of the Stamp Act comes into operation.

40.From the above decisions it is very clear that the admissibility of Ex.A1 can never be questioned by the appellants as no objections were raised before the trial court in this regard. Further the entire compromise decree and its clauses were already acted upon and the same cannot be questioned now, that too, questioning only a portion wherein the suit schedule property was absolutely allotted to 4th defendant. Even this question with regard to the allotment of suit schedule property to 4th defendant is subjudice, pending in C.S.No.723/2000.

41.In the light of the above discussions, issue No.3 is
also decided against the appellants and in favour of the plaintiff.

42.Issue No.5:Considering the relationship of the parties, the trial court has correctly held that the plaintiff is entitled to damages only from the date of filing of the suit and I am in entire agreement with the trial court in this regard.

43.Issue No.6: The trial court has awarded cost to the plaintiff by directing defendants 1 to 3 to pay the same without making apportionment. As rightly pointed out by the appellants, the suit was contested separately by defendants 1 and 2 together and separately by 3rd defendant that too, not on similar grounds. In such circumstances, the trial court ought to have apportioned the cost between defendants 1 and 2 on one side and 3rd defendant on the other side. Hence the trial court decree is modified to that extent, that is, 50% of the cost awarded by the trial court is to be paid by defendants 1 and 2 and the remaining 50% should be paid by third defendant.

44.In the result, I find no merits in the above appeal in A.S.No.261/2004 and the same is dismissed with costs, with the modification as stated above.

45.Even though third defendant filed a separate appeal in A.S.No.216/2004, the same was not pursued and none appeared to argue A.S.No.216/2004. However as the same was also filed against the very same decree made in O.S.No.4225/1999, A.S.No.216/2004 is also to be dismissed with costs in view of the orders passed by me in A.S.No.261/2004. Accordingly, A.S.No.216/2004 is also dismissed with costs, with the modification as stated above. .
46.CRP.NPD.Nos.1108/2005 and 97/2006 were filed by 1st defendant and defendants 1 and 2 respectively questioning the jurisdiction of the trial court and the validity of the decree made in O.S.No.4225/1999 before the execution court. In view of the orders passed by me in A.S.No.261/2004 upholding the validity of the decree made in O.S.No.4225/99, the above Civil Revision Petitions are to be dismissed.

47.Hence C.R.P.NPD.Nos.1108/2005 and 97/2006 are dismissed. No costs.

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